

Remarks

Claims 1-23 were previously amended. Claims 1-12 and 14-22 are presently amended. Claims 1-23 are pending in this application. The Examiner has rejected claims 1-23 under 35 U.S.C. § 102(e) as being unpatentable over U.S. Patent No. 6,920,580 to Cramer, et al. (hereinafter “Cramer”). Applicants respectfully traverse the Examiner’s rejections.

A. Remarks Regarding Rejection of Claims 1-23 Under 35 U.S.C. § 102(e)

The Examiner has rejected independent claims 1, 4, 9, 14 and 19 as being anticipated by Cramer. Applicants respectfully submit that the cited reference does not anticipate the claims. Cramer standing alone does not contain each and every element of the claimed invention and, as such, the reference cannot anticipate the amended claims. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (“The identical invention must be shown in as complete detail as is contained in the . . . claim.”).

In particular, Cramer fails to disclose “providing a third server operative with said two or more cluster nodes, wherein said third server is not a cluster node and wherein each cluster node is a server,” as required by amended independent claim 1 and as similarly required by amended independent claims 4, 9, 14 and 19. The specification of the present application discloses providing a third server, which is not a cluster node, operative with two or more cluster nodes that are servers. (*See, e.g.*, Spec. at Fig. 2.)

The Examiner relies on Cramer's failover monitor 400 to address the claim limitations. (Office Action at 3.) The Examiner states:

As to claim 1, Cramer discloses a method of failover in a having one or more cluster nodes, comprising: providing a server (400 fig.4) operative with said cluster, wherein said server is not a cluster node.

(*Id.* at 2-3.) Yet, as amended, the claims require a third server, which is not a cluster node, operative with two or more cluster nodes that are servers. Cramer fails to disclose the claims limitations at least because: (1) failover monitor 400 is not a server; (2) failover monitor 400 is not operative with two cluster nodes; and (3) three servers—two cluster nodes and one that is not a cluster node but is operative with both cluster nodes is not discussed.

As to the first distinction, Cramer's "filers" are servers, whereas the failover monitor is not a server. In Cramer, "filers A & B are preferably file servers." (Cramer 4:57.) Cramer depicts the servers as FILER A and FILER B (elements 150) in Figure 1. Cramer then discusses how "[e]ach filer has a failover monitor 400 that continuously checks and records the status of hardware and software associated with the filer." (*Id.* at 5:50-53.) Thus, the failover monitor itself is not a server. Cramer depicts each failover monitor 400 as merely a part of servers (filers) 150 in Figure 1. Therefore, failover monitor 400 is not the third server required by the claims.

As to the second distinction, each of failover monitor 400 is only operative with a single server (a "filer") in Cramer. "Each filer has a failover monitor 400." (*Id.* at 5:50-53 (emphasis added).) Accordingly, Cramer's Figure 1 depicts Filer A having its own failover monitor 400 and Filer B having its own failover monitor 400. The claims, by contrast, require a third server operative with two or more cluster nodes. Therefore, failover monitor 400 is not the third server operative with two cluster nodes, as required by the claims.

As to the third distinction, Cramer discusses two servers in its “file cluster.” Cramer’s Figure 1, for example, depicts only two servers—filers A and B—in its file cluster. Cramer does not discuss a third server operative with both filers A and B, where the third server is not a cluster node. Therefore, Cramer does not disclose three servers—two cluster nodes and one that is not a cluster node but is operative with both cluster nodes—as required by the claims.

As Cramer fails to teach or disclose each and every element of independent claims 1, 4, 9, 14 and 19, Cramer does not anticipate these claims. Applicants respectfully submit that these independent claims are allowable. Additionally, Applicants submit that dependent claims 2, 3, 5-8, 10-13, 15-18 and 20-23 are allowable, as they depend from otherwise allowable base claims.

B. Remarks Regarding Rejection of Dependent Claims 2, 3, 5-8, 10-13, 15-18 and 20-23 Under 35 U.S.C. § 102

The rejection of dependent claims 2-5, 7-10 and 12-16 will not be discussed individually herein, as each of these claims depends, either directly or indirectly, from an otherwise allowable base claim.

C. No Waiver

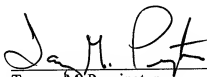
All of Applicants’ arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by examiner, Applicants do not acquiesce to examiner’s additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinctions discussed by Applicants are sufficient to

overcome the anticipation rejections. The current amendments to the claims are sufficient to overcome the novelty and obviousness rejections.

Conclusion

Applicants respectfully submit that the pending claims 1-23 of the present invention, as amended, are allowable. Applicants respectfully request that the rejection of the pending claims be withdrawn and that these claims be passed to issuance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tammy M. Pennington", is written over a horizontal line.

Tammy M Pennington
Registration No. 61,223

Baker Botts L.L.P.
910 Louisiana
One Shell Plaza
Houston, Texas 77002-4995
Tel: (713) 229-1707

Date: March 13, 2009

Attorney Docket Number: 016295.1458